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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1996

COMMONWEALTH OF VIRGINIA, *EX REL.*,
SECRETARY OF THE COMMONWEALTH,

Petitioner,

v.

GERALD P. MISERANDINO AND
KAREN L. MISERANDINO,

Respondents.

On Petition For Writ of Certiorari
To The Maryland Court of Appeals

MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* AND BRIEF OF THE VIRGINIA CREDIT UNION LEAGUE AS *AMICUS CURIAE* (IN SUPPORT OF PETITIONER)

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ON PETITION FOR WRIT OF CERTIORARI TO THE MARYLAND COURT OF APPEALS

MOTION OF THE VIRGINIA CREDIT UNION LEAGUE FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

Pursuant to Rule 37 of the Rules of this Court, the Virginia Credit Union League (the "League") respectfully moves the Court for leave to file a brief *amicus curiae* in the above entitled case. Counsel for Respondents has not replied to movant's letter requesting consent; the Petitioners have granted their consent.

INTEREST OF THE VIRGINIA CREDIT UNION LEAGUE

The League is a statewide association serving both state and federally-chartered credit unions and it represents 265 credit unions in Virginia. Our members will suffer significant economic hardship and inconvenience if *Miserandino v. Resort Properties, Inc.*, 345 Md. 43, 691 A.2d 208 (1997), is not reversed. *Miserandino* places a substantial number of judgments obtained by our members against non-resident judgment-debtor's in Maryland and beyond in danger of being nullified and being deemed unenforceable. The present case will have a substantial impact on the League. If the Maryland Court of Appeals decision is allowed to stand, our members could lose significant amounts of money on void judgments or in costs associated with adjusting existing judgments.

The League represents the concerns of

numerous financial and business interests in Virginia which may be doomed to suffer dire consequences if *Miserandino* is not reversed. The Court should be aware of the ramifications *Miserandino* will have on the Virginia business community. The League therefore requests this opportunity to present its views on the instant case to this Court.

CONCLUSION

For the above stated reasons, we respectfully request the Court to grant this motion for leave to file the accompanying *amicus* brief in the present case in support of the position of the Petitioners.

Respectfully submitted,

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BRIEF OF THE VIRGINIA CREDIT UNION LEAGUE, *AMICUS CURIAE*[1]

INTEREST OF *AMICUS CURIAE*

The interest of *Amicus Curiae* is set out in the Motion for Leave to File, *supra*.

SUMMARY OF THE ARGUMENT

The Maryland Court of Appeals in *Miserandino v. Resort Properties, Inc.*, 345 Md. 43, 691 A.2d 208 (1997), erred in holding that the Virginia statutory method of service of process on non-residents violated procedural due process. In so doing, the court threatened the financial interests of our credit union members and the Virginia business community in general.

[1] Counsel for *amicus curiae*, Paul S. Bliley, Jr., authored this brief in whole. No person or entity other than that *amicus curiae* made a monetary contribution to the preparation and submission of this brief.

As reported in *Virginia Lawyer's Weekly*, Vol. XI, No. 39, p.21 (March 3, 1997), the ruling will "wreak havoc" on any number of Virginia judgments against non-residents that have been obtained using this method of service. This case, erroneously decided, should be reviewed by the Court on a writ of certiorari and should be reversed.

ARGUMENT

I. INTRODUCTION

The Maryland Court of Appeals held in *Miserandino* that Virginia's statutory procedure for service of process on non-residents does not meet the requirements of procedural due process. This ruling places judgments obtained by this method in serious jeopardy. Va. Code § 8.01-329 authorizes service of process on the Secretary of the Commonwealth as the statutory agent of non-residents. The Secretary of the

Commonwealth processes over 50,000 requests for service upon non-residents each year. The Secretary of the Commonwealth is required to send copies of the pleadings which have been served upon her by first-class mail to the defendant's last known address, and she must keep a record of dispatch as she mails them. The Commonwealth of Virginia, after being granted permission to intervene as a party to the case, has filed a petition for a writ of certiorari with this Court. This *amicus* brief is filed in support of the Commonwealth of Virginia's position.

II. THE MISERANDINO DECISION IS ERRONEOUS AND WILL UNNECESSARILY IMPOSE SEVERE ECONOMIC HARDSHIP UPON THE VIRGINIA BUSINESS COMMUNITY.

A. First-Class Mail Satisfies Due Process And The Full Faith And Credit Clause Requires A State To Recognize The Judgment Of A Foreign State When The Judgment Debtor Received Actual Notice Of The Foreign Action.

The League concurs with the legal views of the Virginia Attorney General regarding Miserandino v. Resort Properties, Inc., 345 Md. 43, 691 A.2d 208 (1997). We adopt all the arguments set forth in the Attorney General's Petition For A Writ Of Certiorari.

B. The Miserandino Decision Will Traumatize The Virginia Business Community By Imposing Huge Costs And Losses On Businesses Holding Judgments Obtained Through Virginia's Statutory Method Of Service Of Process On Non-Residents.

The 265 Virginia credit unions which are members of the League have significant business dealings with non-Virginia residents. This is especially true for our northern Virginia members. Northern Virginia is a densely-populated area in which people constantly cross state lines. Many non-Virginia residents, especially Maryland and District of Columbia residents, interact on a daily basis with Virginia

businesses. Virginia credit unions, therefore, deal with non-residents regularly, and often must seek judicial enforcement of debts owed by non-residents.

The Maryland Court of Appeals decision severely hinders and may block altogether our members' ability to enforce debts owed to them by non-residents which are evidenced by judgments previously obtained by our members. As recently reported, if the *Miserandino* opinion stands, "most Virginia default judgments will not be accorded full faith and credit in Maryland." *Virginia Lawyer's Weekly*, Vol. XI, No. 39, p.21 (March 3, 1997). By declaring Virginia's method of service of process on non-residents unconstitutional, the Maryland decision may essentially invalidate all judgments lawfully obtained through this method.

Over 50,000 requests for service in this manner are received by the Secretary of the Commonwealth every year, which indicates that the number of default judgments held by Virginia judgment creditors may be enormous. *Virginia Lawyer's Weekly*, Vol. XII, No. 6, p. A-2 (July 14, 1997). *Miserandino* will affect judgments in both Virginia and federal courts, because these requests for service come from actions in both Virginia and federal courts. Considering that judgments are enforceable for up to 20 years, the potential number of judgments affected by the *Miserandino* decision is as high as a million.

It is not clear if Virginia judgment creditors in this position could ever recoup the money owed to them. While judgment creditors such as credit unions may be able to vacate existing judgments and re-serve

the actions, they would incur substantial costs in doing so. This will make it economically inefficient to pursue collection of any number of smaller debts. Larger debts will be feasible to pursue, but it will be time-consuming and expensive to do so. The *Miserandino* decision will certainly "wreak havoc" on Virginia's judgment creditors holding judgments procured through this method. *Virginia Lawyer's Weekly*, Vol. XI, No. 39, p.21 (March 3, 1997).

The potential invalidation of perhaps hundreds of thousands of judgments will have the additional effect of generating clouds on title to parcels of real estate over which judgment creditors have liens. While it is not clear how many judgment creditors whose judgments may be invalidated have liens to real estate, real estate liens are

commonly used to attempt to enforce judgments. *Miserandino's* effects will be felt for years to come, and could generate costly and time-consuming title litigation. The status of title to much real estate could be unclear for years as attorneys attempt to remedy the damage done by *Miserandino*. The negative effects from *Miserandino* are not limited to judgment creditors, but will be felt by any number of potential buyers and sellers of real estate.

The result of the Maryland decision is that the Virginia business community, among others, suffers and many non-resident judgment debtors receive a windfall. It is unfair that non-residents such as the Miserandinos will be relieved of their debt burden despite the fact that they were accorded due process and, in most if not all instances, received actual notice of the

action against them. Moreover, the huge costs and losses incurred by Virginia credit unions will be passed down directly to the credit unions' over 3.5 million members. This is because credit unions are financial cooperatives, and each credit union member is credit union "owner."

As a practical matter, the Miserandino decision is a disaster for the Virginia business community. If allowed to stand, the decision essentially invalidates any number of existing judgments against non-residents. We urge the Supreme Court to grant a writ of certiorari to address the unanswered questions of whether or not Virginia's method of non-resident service of process is unconstitutional and if judgments obtained by this method should be accorded full faith and credit when the judgment debtor received actual notice of the action.

Conclusion

For the reasons set forth herein, we urge the Supreme Court to grant a writ of certiorari in this case and to reverse the decision below.

Respectfully submitted,

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